

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSE ENRIQUE CRUZ,

Plaintiff,

v.

CITY OF POTTSVILLE, et al.,

Defendants,

:
: CIVIL ACTION NO. 3:21-CV-283
:
: (JUDGE MARIANI)
: (Magistrate Judge Schwab)
:
:
:
:

ORDER

AND NOW, THIS 14th DAY OF JUNE 2022, having reviewed Magistrate

Judge Susan E. Schwab's Report and Recommendation ("R&R") (Doc. 40) for clear error or manifest injustice, **IT IS HEREBY ORDERED THAT:**

1. The R&R (Doc. 40) is **ADOPTED** for the reasons set forth therein.
2. Defendants' City of Pottsville, Pottsville Police Department, Charles Webber, and Michael Messner¹ Motion to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(6) (Doc. 23) is **GRANTED IN PART** and **DENIED IN PART**.

¹ As noted in the R&R,

[there appears to be some confusion about whether the defendant's name is spelled Messer or Messner. Although his name appears as Messer on the docket and within the caption of the briefs, he is also referred to as Messner throughout the body of the briefs. For the sake of consistency, we will refer to the defendant as Messer throughout this Report and Recommendation.

(Doc. 40 at 2 n.1.) In this Order, the Court will refer to this Defendant as Messer other than in the title of the motion to dismiss (Doc. 23).

3. Defendant Rooney's Motion to Dismiss the Complaint (Doc. 24) is **GRANTED IN PART** and **DENIED IN PART**.

4. The Motions are **GRANTED** as follows:

- a. Plaintiffs' claims against Defendants Rooney, Webber, and Messer in their official capacities are **DISMISSED WITH PREJUDICE**;
- b. All claims against Defendant Pottsville Police Department are **DISMISSED WITH PREJUDICE** and Defendant Pottsville Police Department is **DISMISSED** from this action;
- c. Plaintiff's Fifth and Fourteenth Amendment claims are **DISMISSED WITH PREJUDICE** against all Defendants;
- d. Plaintiff's Eighth Amendment claims are **DISMISSED WITH PREJUDICE** against all Defendants;
- e. Plaintiff's request for punitive damages against the City of Pottsville is **DISMISSED WITH PREJUDICE**;
- f. Plaintiff's ADA claims against Defendants Rooney, Webber, and Messer are **DISMISSED WITH PREJUDICE**;
- g. Plaintiff's ADA claim against Defendant City of Pottsville is **DISMISSED WITHOUT PREJUDICE**;

- h. Plaintiff's claims against Defendant City of Pottsville brought pursuant to *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978), are **DISMISSED WITHOUT PREJUDICE**;
- i. Plaintiff's request for declaratory judgment is **DISMISSED WITHOUT PREJUDICE**;
- j. Plaintiff's request for injunctive relief is **DISMISSED WITHOUT PREJUDICE**.

5. The Motions are **DENIED** as follows:

- a. Pottsville Defendants' Motion is **DENIED** as it relates to Plaintiff's allegedly unlawful seizure under the Fourth Amendment against Defendants Messer and Webber;²
- b. Pottsville Defendants' Motion is **DENIED** as it relates to Plaintiff's excessive force claim under the Fourth Amendment against Defendants Messer and Webber;³
- c. Defendants' Motions are **DENIED** as they relate to Plaintiff's state law claims;

² Defendant Rooney does not seek dismissal of Plaintiff's Fourth Amendment unlawful seizure claim. (See Doc. 40 at 15 n.5.) Because Defendant Pottsville Police Department is dismissed from this action, "Pottsville Defendants" are Defendants Webber, Messer, and the City of Pottsville. (See Doc. 40 at 15 n.5.)

³ Defendant Rooney does not seek dismissal of Plaintiff's excessive force claim. (See Doc. 40 at 20 n.6.)

- d. Pottsville Defendants' Motion is **DENIED** as it relates to Plaintiff's request for punitive damages against Defendants Webber and Messer.⁴
6. Based on the foregoing, the following claims and requests for relief set out in Plaintiff's Complaint (Doc. 1) go forward:
- a. Count I for unlawful seizure under the Fourth Amendment against Defendants Rooney, Messer, and Webber;⁵
 - b. Count II for excessive force under the Fourth Amendment against Defendants Rooney, Messer, and Webber;⁶
 - c. Count V, Plaintiff's state law claims, against Defendants Rooney, Messer, and Webber.⁷
 - d. Plaintiff's request for compensatory damages;
 - e. Plaintiff's request for punitive damages against Defendants Rooney, Messer, and Webber.

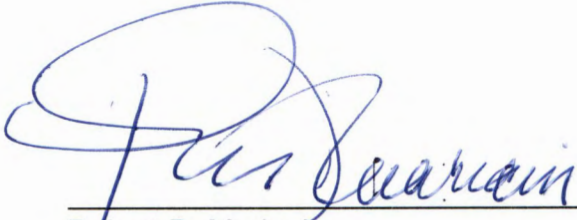
⁴ Defendant Rooney does not seek dismissal of Plaintiff's request for punitive damages. (See Doc. 40 at 41 and Docs. 24, 26.)

⁵ Plaintiff's claim for unlawful seizure against Defendant Pottsville is construed as a *Monell* claim which is being dismissed without prejudice.

⁶ Plaintiff's claim for excessive force against Defendant Pottsville is construed as a *Monell* claim which is being dismissed without prejudice.

⁷ Plaintiff's Complaint alleges that "the conduct of the police officers constitute [sic] false arrest and imprisonment, assault & battery, malicious prosecution, negligence under the laws of the State of Pennsylvania." (Doc. 1 at 4c.)

7. Plaintiff is granted leave to amend the following claims:
- a. Plaintiff's ADA claim against Defendant City of Pottsville (see Doc. 40 at 35-38);
 - b. Plaintiff's claims against Defendant City of Pottsville brought pursuant to *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978), for unlawful seizure under the Fourth Amendment and excessive force under the Fourth Amendment (see Doc. 40 at 25-29);
 - c. Plaintiff's request for declaratory judgment (see Doc. 40 at 38-40);
 - d. Plaintiff's request for injunctive relief (see Doc. 40 at 40).
8. If Plaintiff chooses to file an amended complaint, he must do so **no later than July 15, 2022**.⁸
9. This matter is **REMANDED** to Magistrate Judge Schwab for further pretrial management.



Robert D. Mariani
United States District Judge

⁸ An amended complaint must include the claims and requests for relief set out in paragraph 6 which go forward following disposition of Defendants motions to dismiss and any claims and/or relief identified in paragraph 7 which Plaintiff wishes to amend.